RECOMMENDATIONS

The Commission examined each of the following major components of the civil service system: the merit principle, the relative roles of the State Personnel Board and the State Personnel Director, selection and the "rule of three," residency requirements, positions exempt from the system, temporary appointments, probationary periods, contracting, discipline, veteran's preference, and the unique issues surrounding human resource management at institutions of higher education.[43]

Merit Principle. The merit principle as set forth in Article XII, § 13(1) is the cornerstone of an effective civil service system: "Appointments and promotions to offices and employments in the personnel system of the state shall be made according to merit and fitness, … without regard to race, creed, or color, or political affiliation."[44] As the Colorado Supreme Court has said, "The overarching purpose of the state personnel system is to assure that a well-qualified work force is serving the residents of Colorado." *Department of Human Services v. May*, 1 P.3d 159, 166 (2000). We recommend that this fundamental principle remain undisturbed in our Constitution, except for the addition of "sex" to the list of impermissible bases for appointments and promotions. The system should also provide additional flexibility in the determination of qualifications, and further specific facets of the merit principle should be more fully set out in statute.

The State Personnel Board and the State Personnel Director. The civil service system is governed by a patchwork of constitutional provisions, statutes, Board rules, and Director's procedures, as interpreted by court rulings. Much of this flows from the structure of the 1970 amendment, which created both the Board and the Director.[45]

It makes sense for an executive branch official to oversee the selection system, classification, and compensation, given the extensive staffing and expertise required to discharge these responsibilities. However, the Commission does not believe there must be a constitutionally-mandated Personnel Department in order to carry out these responsibilities, and would recommend that this specific requirement be eliminated from the Constitution. At the same time, we would propose the Constitution specify that the Personnel Director have rulemaking authority with respect to those aspects of the system for which he or she is responsible.[46]

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[43] It is the Commission's expectation that overall structure of the Civil Service Amendment will remain, and that individual employees certified prior to July 1, 2005 would retain their pay, tenure, and status, similar to what occurred with the adoption of the 1970 amendment. *See* Colo. Const. art. XII, § 13 (11).

[44] "The merit principle is essential to the integrity of the system." Testimony of Diana Algiene-Henry, staff council, University of Northern Colorado (July 1, 2003).

[45] *See, e.g. Department of Personnel v. State Personnel Board*, 722 P.2d 1012, 1019 (Colo. 1986)("the board and the department are distinct entities with separate powers and responsibilities.")(quoting *Colorado Ass'n of Public Employees v. Lamm*, 677 P.2d 1350, 1355 (Colo. 1984)).

[46] This ambiguity was soon recognized. "[P]roblems have developed with the implementation of the 1970 amendment. Conflict exists between the personnel board and the personnel director over their division of responsibilities." Colorado Legislative Council, Committee on the Personnel System, *Recommendations for 1984*, Research Pub. No. 283 (Dec. 1983) at 60.

The Commission recognizes the critical role of the Board, which serves as an objective arbiter of employment disputes as well as an independent check on potential executive branch abuses. It is essential that the Board and its rulemaking authority be retained, but its role needs to be more clearly focused. We propose a statutory adjustment so that the Board will continue hearing appeals relating to disciplinary matters and separations, but not hear other matters arising out of the grievance process, which are better resolved at the agency level between the supervisor and employee. To ensure there is a greater management responsiveness and accountability, the Commission recommends that the General Assembly strengthen the requirements for state managers to timely and effectively resolve grievances.[47]

Discrimination claims present a more difficult issue, because there are extensive investigatory and review processes provided by state (Colorado Civil Rights Division) and federal (Equal Employment Opportunity Commission and the U.S. Department of Justice) agencies. The Board refers all claims of violation of the Colorado Anti-Discrimination Act to the CCRD, which conducts an investigation and sends a report back to the Board. The investigations may take as long as 450 days, almost never find probable cause to believe the action was discriminatory, the reports are not binding on the Board, and the administrative law judges do not consider those reports because their findings have to be based upon the evidence, not upon reports from outside investigators. These investigations also cause a drain on CCRD resources, for which the CCRD is not compensated by the EEOC. This process contradicts the overall mission of the Board, which is to provide a quick and inexpensive forum for resolving employment disputes, and the Commission recommends statutorily eliminating it.

Similarly, the Board refers "whistleblower" retaliation claims to the Department of Personnel & Administration, which conducts an investigation and sends a report back to the Board. Again, those reports rarely result in findings of retaliation, they create a delay in the hearing process, the reports are not binding on the Board, and the administrative law judges do not consider the reports.

It would be more efficient, and more consistent with the Board's mission, to have discrimination and whistleblower claims be resolved directly through the Board's processes without going through an intermediate time-consuming stage with either CCRD or DPA, which adds little or no value to the ultimate determination. We recommend the statutes be amended so that the Board is vested with sole jurisdiction over employees' state civil rights claims, while ensuring that employees' federal civil rights claims continue to be reviewed by the EEOC. The Board should retain jurisdiction to grant discretionary hearings for grievances that allege discrimination, retaliation, or other constitutional or statutory violations.

Selection and the "Rule of Three". Colorado's current selection system demands not only that candidates be qualified, but also that there be a competition and a resulting ranking of the candidates, with only those ranked in the top three being eligible for appointment. Only ten States constitutionally require a competitive selection process, and of those only Colorado limits

[47] Management accountability could be increased through a variety of measures, including specific statutory requirements or fines in cases of demonstrated failure to be responsive to legitimate employee concerns. *See*, *e.g.*, § 24-50-118, C.R.S.

appointments to the top three candidates.[48] This system requires the State to expend considerable resources developing, validating, and administering examinations to create ranked eligible lists, while creating extensive delays of weeks or even months in filling vacancies.[49]

At the same time, competitive examinations put a premium upon test-taking skills, and discount judgment, demeanor, and other factors that are difficult to assess through a written instrument.[50] It does not ensure that the best qualified applicant for a position can even be considered for appointment, and may even have a discriminatory effect.[51] In this way, such a selection process may actually work at cross-purposes with the merit principle.[52] The Commission also heard some testimony that on occasion a quality temporary employee would learn a job, fit in well with co-workers, and show great promise, but there was no means to transition the employee into the permanent system without announcing a vacancy and going through the laborious process of competitive testing. A system which thus hinders the appointment of qualified and *proven* candidates must be revised.

More criticism was leveled at the "rule of three" – by both employee and manager alike – than any other aspect of the current system.[53] The Commission recommends allowing the

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[48] *See* Appendix C.

[49] The reliance upon competitive examinations to determine an applicant's merit was first embraced in the Pendleton Act of 1883, which ensured that one quarter of all positions in the federal government – primarily lower level jobs – would be filled through competitive examinations. *See* Van Riper, *History of the United States Civil Service Commission* (1958). During the Progressive Era of the early 20th Century, trends in government naturally mirrored the trends in society at large, placing increasing confidence upon science and the ability effectively test for a wide range of knowledge, skills, and abilities. However, more recent trends and research have undercut this assumption. *See* Shafritz, *Position Classification: A Behavioral Analysis for the Public Service* (1973).

[50] Testimony of Zaneta Johns, Human Resources Director, University of Colorado at Boulder (May 7, 2003); testimony of Cynthia Hier, Human Resources Director, University of Colorado at Denver (May 9, 2003); testimony of Lee Ann Gilbert, Director of Nursing, Colorado Mental Health Institute at Pueblo (June 25, 2003); testimony of Richard Wesolowski, Senior Human Resources Consultant, Mountain States Employers' Council (June 26, 2003). It was also observed that an emphasis upon high-stakes testing is especially incongruous at institutions of higher education. Testimony of Kay Norton, President, University of Northern Colorado (July 1, 2003).

[51] Testimony of Jim Rizzuto, President, Otero Junior College (Apr. 23, 2003); testimony of Dana Gibson, Vice Chancellor, University of Colorado at Denver (May 9, 2003); testimony of Rick Malinowski, Director, Division of Information Technologies, Department of Personnel & Administration (June 4, 2003).

[52] "I think the State is at competitive disadvantage when it comes to recruiting employees. For example, if we like a candidate and persuade them to apply, they must take a test and our hope is that they make the cutoff. If they pass the test they may not get the interview since they are too far down the list. … If a company believes someone is qualified and they like the person, they can go ahead and hire them. And as you know, the State must follow personnel rules, which provides little leeway in selecting the hire." E-mail from Dick Pond, Senior Revenue Agent, Department of Revenue (May 1, 2003). *See generally* Nigro and Nigro, *The New Public Personnel Administration* (1981)(merit means more than ranking candidates); Hunter and Hunter, "Validity and Utility of Alternative Predictors of Job Performance," *Psychological Bulletin*, v. 122, pp. 72-98 (1996)(there are other important predictors of performance).

[53] *E.g.*, testimony of Deanna Adams, Colorado State University-Fort Collins staff council (Apr. 17, 2003); testimony of Jim Rizzuto, President, Otero Junior College (Apr. 23, 2003); testimony of Cynthia Hier, Human Resources Director, University of Colorado at Denver (May 9, 2003); testimony of Shae Raphael, staff council, Red Rocks Community College (May 9, 2003); testimony of Ray David, Highway Operations

interview and appointment of any of a limited number of applicants who are qualified for the position, as provided by law.[54] Qualifications may be evaluated by a written examination, oral board, search committee, or other valid process,[55] but the Commission recommends eliminating the current constitutional demand that qualifications "be determined by competitive tests of competence."

Probationary Periods. Colorado is the only State that specifies the probationary period in its Constitution, and this unnecessarily eliminates the flexibility of the General Assembly to make adjustments in the future. We recommend retaining the current 12-month probationary period, but moving it into statute.

Residency. The initial report of the Commission's working group recommended retaining the current residency restriction, which requires all state employees to reside in Colorado, and further requires all *applicants* to reside in the State unless the State Personnel Board grants a waiver. However, since that time the Commission has heard additional testimony which highlights both the undesirability and unworkability of the current residency restriction.

The Commission heard about specific types of positions that are difficult to recruit, for which the residency restriction only aggravates the problem. We heard that with the shortage of qualified nursing staff, the Mental Health Institute in Pueblo has an extremely difficult time securing well-qualified applicant pools.[56] At Alamosa, the Commission heard that recruitment for several of the skilled trades are hindered by the residency restriction.[57] In Glenwood Springs, the Commission was told that the limitation made it difficult to hire capable young engineers.[58] Although not as pronounced as in other areas, the Commission also heard testimony that state offices near Sterling and Greeley experience difficulty recruiting because of the residency restriction.[59]

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and Maintenance (Montrose), Department of Transportation (June 11, 2003); testimony of Phyllis Shiba, staff council, University of Colorado at Colorado Springs (June 25, 2003); testimony of Keith Powers, Highway Operations and Maintenance (Eagle), Department of Transportation (July 10, 2003).

[54] Even under the current system the State is beginning to experience litigation regarding non-selection of someone on a final list of three, which means managers are not getting the benefit of having a list; in a litigious world it will be necessary to justify any selection, regardless of the selection process. Testimony of Madline SaBell, Human Resources Director, Department of Corrections (Apr. 22, 2003).

[55] Using a panel selection process may also help to limit patronage issues. Testimony of Gerald Marroney, State Court Administrator (June 26, 2003).

[56] Testimony of Lee Ann Gilbert, Director of Nursing, Colorado Mental Health Institute at Pueblo (June 25, 2003).

[57] Testimony of Bill Mansheim, Vice President for Finance and Administration, Adams State College (June 13, 2003).

[58] Testimony of Keith Powers, Highway Operations and Maintenance (Eagle), Department of Transportation (July 10, 2003).

[59] "Within the past two weeks, I have received notices from Wyoming and Minnesota announcing Wildlife Officer positions. Wyoming is so desperate for new Wildlife Officers that they are conducting tests and interviews in Colorado and throughout Arizona and Utah. In order to hire the best person for the job and diversify our 'gene pool,' it would be wise to recruit and hire from outside the state's borders." E-mail from Gary Berlin, Division of Wildlife, Department of Natural Resources (May 19, 2003).

While the State Personnel Board can waive the residency requirement as to *applications*, there is no ability to waive residency for persons actually *appointed* to state positions. In the Durango area, recruitment for most mid- to low-paying positions is hindered by the high cost of living in La Plata County. Qualified candidates from San Juan County, New Mexico – less than 20 miles away from Durango – will not apply because they cannot afford to move across the state line to take the job. Some 2,300 people – over 10% of the total workforce of La Plata County – travel from outside the county.[60]

For some time there have been state employees residing outside Colorado, notwithstanding the restriction, the most obvious example being the entire class series devoted to "Out of State Revenue Agents." These individuals perform field audits of large, multi-state or international corporations doing business in Colorado, conducting audits at the organization's location of financial records and company reports used to prepare tax returns and other reports. Over the years these employees have been posted to locations such as New York/New Jersey, Chicago, Dallas, and San Francisco. In addition, the Center for Environmental Management of Military Lands at Colorado State University employs about 180 staff in Colorado and across the country.[61] Currently, the Center has fewer than a dozen classified employees living and working in places such as New York, Michigan, Florida, Louisiana, Washington, Alaska, and Hawaii.[62]

Importantly, eliminating the residency requirement would not have an adverse affect on state revenues, as the law currently provides that an individual must pay Colorado tax on income earned here, regardless of whether the individual actually lives in the State.[63] A constitutional residency restriction ignores the realities of our national economy, and is inconsistent with the constitutional purpose of the civil service system, "to assure that a well-qualified work force is serving the residents of Colorado." The Commission recommends eliminating the requirement that applicants be residents, and moving the requirement that appointees be residents into statute, so that the General Assembly can provide limited exceptions as it believes appropriate.

Exempt Positions. The discussion of the number and types of positions to be exempted from the civil service is bound up with two competing interests: the merit principle and the effectiveness of representative government. The State needs to protect its permanent professional work force, while at the same time ensuring that its work force is responsive in implementing the policies determined by the citizens' elected representatives.[64] Therefore, the

[60] Region 9 Economic Development District of Southwest Colorado, *Report: Demographics and Economics* (May 2002).

[61] The Center is a team of environmental professionals which provides expertise in land management and ecosystem science as they apply to military testing and training lands.

[62] A handful of Department of Corrections employees live in Nebraska and New Mexico, and the Department of Agriculture employs one Wyoming resident.

[63] *See* § 13-22-109, C.R.S. In fact, the law requires tax to be paid on income from Colorado sources, even if the individual is never physically within the State.

[64] "Politics is a vehicle for change." Testimony of John W. Suthers, United States Attorney (Apr. 15, 2003).

question is not whether to have exemptions, but rather what types of exemptions strike the best balance between these two important principles.[65]

The Commission does not believe it is necessary to dramatically expand the exemptions that are currently available, nor to expand gubernatorial appointments.[66] We do believe that department heads need to be able to appoint their immediate staffs in positions where loyalty and confidentiality are particularly key, such as deputy department heads, chief financial officers, public information officers, human resource directors, and executive assistants.[67]

The working group report had initially proposed exempting division directors, based upon the extensive review and recommendations made by consultants, task forces, and legislative committees going back to the late 1930's. However, following the publication of the working group report, the Commission received substantial testimony from both employees and managers expressing concern over the continuity and expertise that might be lost if senior management positions became at-will.[68] Although this does not diminish the need for a greater degree of responsiveness and accountability from those senior managers formulating and carrying out executive policy, we believe those goals can be achieved and employees' concerns met through a more flexible senior executive service system.[69] Therefore, in addition to the department heads' personal staffs discussed above, we also recommend providing constitutional recognition and exemption of a limited number of positions through the senior executive service, as provided by law, so that it can be adapted as necessary to meet the demands of the State's business.[70]

Temporary Appointments. Only three States constitutionally specify the duration of temporary appointments. In Colorado, temporary employees are limited to six months, which

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[65] "[T]here are some positions now in the 'classified civil service' that should be removed from that category if the people of the state are to obtain for themselves, through their elected chief executive, a responsive and responsible state government, and if they are to escape a bureaucratic state government." Griffenhagen & Associates, *Report on the Administrative Organization and Functions of the State Government of Colorado, Personnel Administration* (Jan. 6, 1939) at 6.

[66] Only four States even specify the exemptions in their respective Constitutions: Colorado, Louisiana, California, and Michigan.

[67] The Commission recommends that this change be effective with the next administration, on January 1, 2007, while all other changes should be effective July 1, 2005.

[68] *E.g., s*tatement of State Personnel Employees Executive Council, University of Northern Colorado (July 1, 2003)("While it is important to allow administrators at the highest level to select their immediate staff, it is important that there be provisions for the retention of core knowledge and expertise").

[69] Senior executives do not warrant and should not expect the same panoply of protections as line employees not responsible for formulating policy. As Rudy Marquez, a materials tester with the Department of Transportation office in Lamar, told the Commission: "People doing the work need protection – the ones out there getting their hands dirty."

[70] The Commission also recommends changing the constitutional exemption of "members of any board or commission serving without compensation except for per diem allowances provided by law and reimbursement of expenses" to simply "members of any board or commission." This would not increase current exemptions but would permit some cleaning-up of the provision by allowing the elimination of the current list of "members of the public utilities commission, the industrial commission of Colorado, the state board of land commissioners, the Colorado tax commission, the state parole board, and the state personnel board."

is a somewhat crude way of protecting the merit principle. There appears to be general consensus that six months is too short in many circumstances, such as when a special project may take a year to complete or when the funding (often federal grant funds) is for a specific one- or two-year period.

The working group proposed extending temporary appointments to a maximum of 24 months, while requiring appointees to be fully qualified. After hearing further testimony and discussing this issue in greater detail, the Commission does not believe this either adequately addresses the need for flexibility that has been demonstrated, nor promotes the merit principle as fully as it could. Similarly, the Commission examined the potential benefits of a system of "term" appointments of one or two years, but some federal grants or other projects may extend more than two years. Thus, the working group proposal (or some variation of it) would reduce, but not eliminate, the problems caused by the current six-month limit, especially in institutions of higher education.

However, upon further research and review, it appears the problem with temporary appointments has less to do with the duration than the consequences of hiring permanent employees for longer-term projects and programs. Under current law, a permanent certified employee has "retention rights" (also known as "bumping rights") whenever his or her position is eliminated for lack of work, lack of funds, or reorganization. These rights entitle the employee to be transferred into other positions for which he or she has experience and is qualified, even if in some cases it means taking the position of another, less senior, employee.[71]

Only the "rule of three" drew more negative comment at the Commission's public hearings than bumping rights. The disruptive effects and adverse impact upon morale were criticized by managers and employees alike.[72] It is not a practice that is widely used in either

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[71] For this reason, they are also informally known as "bumping rights," because of the ability of one employee to "bump" another out of his or her job.

[72] Testimony of Jamie Case, staff council, Western State College (June 11, 2003); testimony of Richard Wesolowski, Senior Human Resources Consultant, Mountain States Employers' Council (June 26, 2003). "I am totally opposed to the state's system of 'bumping' when layoffs are necessary. It seems to me that this system causes many problems including: low morale due to concern over job loss, not just due to layoffs in one's own department, but due to bumping; low morale, hard feelings and very uncomfortable working situation if a person actually has to be bumped out of his/her job by someone else; less skilled employees in some positions due to someone who is very skilled at position being bumped out by someone with more seniority who technically qualifies for the position but does not have the same job skills and/or knowledge; potential loss of very valuable employees who don't have as much seniority as someone else." E-mail from Jeanette Savoy, Child Support Enforcement, Department of Human Services (Apr. 30, 2003). "How can this possibly be serving the State's best interests? Keeping underperformers while letting the best go is just bad business and incredibly unfair." E-mail from David Remson, Department of Public Health and Environment (June 25, 2003). A particularly notable example from the Department of Corrections this past year illustrates this point. A General Professional III position in Cañon City was abolished, and the employee bumped into a less senior employee's position in Sterling. The displaced Sterling employee had the right to bump another less senior employee back in Cañon City. In another case, there was a string of no fewer than five bumps which resulted from the elimination of single position. Statement of Anna Marie Campbell, Manager, Dispute Resolution Unit, and Rick Thompkins, Manager, Employment Services Unit, Department of Corrections (Sept. 10, 2003).

the public or private sector, and it is not required by the Colorado Constitution.[73] Instead, it is established by state statute and Personnel Board rule. The Commission recommends the General Assembly amend § 24-50-124, C.R.S. to eliminate bumping into occupied positions, while retaining it for vacant positions. [74] At the same time, we would support eliminating the current ability of a department (with the approval of the State Personnel Board) to limit bumping to major divisions, rather than department-wide.

Another problem with the current six-month limit that the Commission has identified is that it interferes with the effective use of *seasonal employees*. Seasonal employees are different from temporaries in that their positions are not limited to a relatively short period of time, and the need recurs every year, but always for periods of less than a year. Examples include park officers, of whom over 300 are required each year to police Colorado's state parks, another 300 parks employees providing tourist and visitor services and administrative support, a wide range of over 100 wildlife staff, and supplemental education staff who are needed only during the academic year.[75] Importantly, the public is better served if the State is permitted to rehire the same trained and experienced personnel.

Therefore, the Commission recommends extending temporary appointments from the current six months to nine months out of any twelve. This would permit the rehiring of a temporary employee after three months, rather than current requirement of a six-month gap in employment. While the problem with the six-month limit was widely recognized by both managers and employees, and an extension of the temporary appointment limit to twelve months appears to have substantial support from the state workforce, the Commission is not convinced that extending temporary appointments to 12 or 24 months (as had been proposed by the working group) would not lead to an undercutting of the merit system. Allowing unlimited annual reappointments of employees for periods of years would amount to the indefinite and unlimited appointment of persons who had not been subjected to the formal selection process. Not permitting reappointments would destroy the demonstrated need for recurring seasonal employees discussed above. Therefore, on balance, the combination of bumping reform and allowing temporary appointments for nine of any twelve months best provides the necessary flexibility, while better protecting and strengthening the merit principle.

Discipline. The current constitutional language describes four types of misdeeds for which a certified employee may be dismissed, suspended, or otherwise disciplined: "upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude."[76] The Constitution should simply

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[73] The bumping concept does have its roots in the narrow context of Article XII, § 15 of the Constitution which provides that in a layoff non-veterans must be separated before veterans (other than military retirees) with equal or greater time of service, counting military and state service.

[74] This approach has the additional advantage of enabling employees working on such multi-year projects or programs to be eligible for medical and other benefits which are not available to temporary employees, which was a concern raised at several public meetings.

[75] Statement of Bill Daley, Deputy Director-Administration, Department of Natural Resources (Sept. 18, 2003); testimony of Shelley Lutz, Human Resources Director, Colorado School for the Deaf and Blind (June 25, 2003).

[76] Colo. Const. art. XII, § 13(8).

provide that certified employees may be disciplined or dismissed for cause, as provided by law, and the accompanying statute should include a non-exclusive list of bases such as inefficiency, poor performance, misconduct, insubordination, and conviction of a felony.

The working group had recommended eliminating the progressive discipline requirement, but the Commission heard from both employees and managers who have argued forcefully that it is a protection against arbitrary action.[77] In addition, it makes managers properly document performance problems, which is essential in today's litigious environment in any case. Therefore, the Commission is not recommending any change to the current progressive discipline requirement.

Some state managers have complained that the current system of Board review of disciplinary actions makes it difficult or impossible to take action against a poor employee. In some cases, the agency has proved that the employee was a poor performer or engaged in misconduct, but the manager's decision was overturned because of some procedural error. When such employees must be reinstated with full back pay and benefits, it has a destructive effect on morale in the workplace. Some managers are also deterred from taking disciplinary action for fear of being reversed on a technicality.

This arises from the current legal standard that the courts have developed for civil service matters: whether the manager's action was "arbitrary, capricious, or contrary to rule or law." While this term can mean various things depending on the context,[78] in state personnel cases it means any one of the following:

- The manager failed to use reasonable diligence and care to gather relevant evidence; or
- The manager failed to give candid and honest consideration of the evidence; or
- The manager's action is based on conclusions that a reasonable person could not fairly and honestly reach.[79]

It is the first of these standards which causes the most problems and leads to the most incongruous results. If a manager undertakes an incomplete investigation, the employee may have to be rehired, even though after a full hearing it was proven that there was a good reason for termination. This serves no public purpose and in fact undercuts the merit principle. Once

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[77] *E.g.*, testimony of Phyllis Shiba, staff council, University of Colorado at Colorado Springs (June 25, 2003).

[78] *See Schauer v. Smeltzer*, 488 P.2d 899 (Colo. 1971)(motivated by personal notion or whim, rather than a reasonable or rational basis); *Matter of Estate of Damon*, 915 P.2d 1301 (Colo. 1996)(an abuse of discretion); *Sundheim v. Board of County Comm'rs*, 904 P.2d 1337 (Colo. App. 1995)(no articulated basis for the decision bears any rational relationship to a legitimate governmental interest); *Eckley v. Colorado Real Estate Comm'n*, 752 P.2d 68 (Colo. 1998)(unsupported by any competent evidence).

[79] *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001)(*quoting Van deVegt v. Board of County Commissioners*, 98 Colo. 161, 55 P.2d 703, 705 (Colo. 1936)). *Lawley* overruled *Hughes v. Department of Higher Education*, 934 P.2d 891 (Colo. App. 1997), which had held that "arbitrary and capricious" meant "without a rational basis."

an agency has shown misconduct or poor performance, the employee should have to prove, by clear and convincing evidence, that the manager's action lacked any rational basis.

This approach would eliminate reversals of discipline where an administrative law judge or the Board had a difference of opinion over the appropriateness of the action taken by the manager, unless that action was so extreme as to be irrational, while maintaining the same protections that employees have under the current law.[80] Therefore, the Commission recommends a statutory revision requiring a manager's decision to be upheld unless the employee proves that the decision was irrational.[81]

Veteran's Preference. The Commission encountered very little opposition to providing a preference to veterans, although state employees are divided as to how it should be applied in practice. The Commission also recognized, after receiving significant input following the working group report, that it had neither the time nor the expertise to tackle the complex problem of designing an ideal veteran's preference system, entailing as it does the interplay of state and federal (including military) law.[82] This sort of extensive detail is better provided by legislative bodies than by Constitutions, and the Commission urges the General Assembly and veteran's groups to consider an effort to thoroughly revamp the State's preference policy.

Because there was little perception that the preference in any sense detracted from the effectiveness of the state workforce, the Commission determined at an early stage that any change to the preference would be considered only to the extent necessary to effectuate other proposals for reform. Chief amongst these involves the move from a "rule of three" to a "rule of qualified." The current point system is directly related to the "rule of three," and so must be modified in some minor fashion to ensure that the preference will continue to have vitality if competitive testing and ranking are eliminated. The working group proposed requiring that all qualified veterans receive interviews, but in some agencies – most notably those in the public safety arena – the Commission received feedback that this would not be an appreciable preference, and would be difficult to carry out, given the high numbers of veterans in typical applicant pools. Designing a "perfect" veteran's preference, which provides precisely the right benefit to the right group of people, while remaining easy to administer, is an elusive ideal which warrants additional legislative attention.

Therefore, the Commission recommends that the constitutional references to "points" be changed to "percentage points," and "competitive examination" be changed to "competitive examination or other comparative evaluation of applicants," which would permit the

[80] If the manager acts without sufficient investigation, so that the decision is unsupported by evidence, then the decision had no rational basis and should be reversed. If the manager fails to give proper consideration to the evidence, the result again will be that the decision had no rational basis and should be reversed. If the manager reaches a decision that no reasonable person would have reached based upon the evidence, that decision will have no rational basis and should be reversed.

[81] Essentially, the recommendation is to reinstate, by statute, the standard used in *Hughes v. Department of Higher Education, supra*.

[82] For example, it would be necessary to evaluate the wide variety in the character and degree of military service (active, inactive, retired, reservist, combat, non-combat, etc.), as well as determine the appropriate tailoring of the wide variety of potential preference policies (points, percentages, mandatory interview or hiring, additional preferences for disabled veterans or surviving spouses).

preference to be fully effective when a process other than a scored testing instrument is used in selecting eligible candidates.[83] In addition, no changes should be made to the current retention preference, which provides that qualified veterans may be laid off only after non-veterans with the same or less time of service have been laid off.[84] To help ensure more effective enforcement, the Commission further recommends that the Department of Personnel & Administration provide an administrative review process for veterans who believe they may have been denied the benefit of the preference with respect to applications for state employement. Lastly, the Commission recommends that the General Assembly work to clarify and strengthen the veteran's preference to provide a more workable and effective means of recognizing the sacrifices of those who have served – and continue to serve – in our armed forces.

Contracting. The State has always contracted with private vendors to furnish goods or services not provided by state employees, whether it be something as mundane as office supplies, or as major as highway and prison construction projects. "Privatization can provide important benefits by reducing costs and increasing governmental efficiency and productivity."[85] Importantly, however, the Civil Service Amendment makes no mention whatsoever of contracting: when it can be done, when it can't be done, how it should be done.[86] Although the Executive Branch and the General Assembly have attempted from time to time to provide direction, these questions have been resolved, in large part, by the courts.

The General Assembly enacted § 24-50-128, CRS in 1963, introducing the concept of outsourcing through the use of personal services contracts. Between 1963 and 1979, the State Personnel Director approved only approximately 300 contracts per year, and very little change occurred to the original law. In 1979, § 24-50-128(2) and (3) C.R.S. were added to provide additional guidance to agencies using personal services contracts.[87]

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[83] The percentage approach actually strengthens the current preference because any preference expressed in points could be subverted by increasing the total available points from the customary 100 to some larger number.

[84] "[E]mployees not eligible for added points … shall be separated before those so entitled who have the same or more service in the employment of the state or such political subdivision, counting both military service for which such points are added and such employment with the state or such political subdivision, as the case may be, from which the employee is to be separated. … In the case of such a person eligible for added points who has completed twenty or more years of active military service, no military service shall be counted in determining length of service in respect to such retention rights. In the case of such a person who has completed less than twenty years of such military service, no more than ten years of service … shall be counted in determining such length of service for such retention rights." Colo. Const. art. XII, § 15(3).

[85] *Colorado Ass'n of Public Employees v. Department of Highways*, 809 P.2d 988, 994 (Colo. 1991)(citing Note, *Civil Service Restrictions on Contracting Out by State Agencies*, 55 Wash. L. Rev. 419, 424-26 (1980)).

[86] The Civil Service Amendment "does not further specify the services that must be performed by state employees and offers no guidance concerning criteria or mechanisms for delineating, enlarging or reducing the personnel system." *Department of Highways*, 809 P.2d at 992.

[87] Subsection (2) required the State Personnel Director to review contracts that were for more than six months in duration. Subsection (3) restricted the use of contracts that created employer-employee relationships to provide services "commonly or historically performed by employees in regular positions in the state personnel system."

In 1991, the Supreme Court issued a ruling which has hampered efforts to use contracts notwithstanding the business case.[88] The Department of Highways had attempted to contract for custodial, maintenance, and utility services, with the result that 35 positions were eliminated and employees laid off. In concluding that the contracts were impermissible, the court discussed two related – but separate – issues: the elimination of *positions* from the civil service, and the separation of individual *employees* from the civil service.[89] The court did not make a clear distinction, leading to no small amount of confusion and disagreement regarding the overall effect of the decision.[90]

The court also picked up on the language of the 1979 statutory addition which disapproved outsourcing services that had been "commonly or historically" performed by employees in regular positions in the state personnel system. In the case of the highway employees, the court had no problem invalidating the contracts on this basis. In 1993, the General Assembly passed a comprehensive law designed to sustain the contracting then being done by the State, which included a repeal of the "commonly or historically" provision of the 1979 law.

In 2000, the Supreme Court ruled that the reallocation of classified juvenile institution teaching positions from the Department of Human Services to exempt Metropolitan State College positions, while preserving the civil service rights of individual employees, was constitutional.[91] Although the court recognized that the case did not involve privatization, it explained that this was at least in part because the teachers had other legal protections provided by the college and thus not subject to the "dangers" of private employment.[92] The court described these dangers as being "left without the protections of the merit system," such as "competitive tests of competence, protections from arbitrary and oppressive treatment, and due process procedures before disciplinary action or termination."[93] As in *Department of Highways,* the court was somewhat ambiguous regarding whether this concern was for current state *employees,* or for *positions*. Consequently, there has continued to be a cloud over state contracts for services which are currently being performed by state employees.

Of course, whether state employees are currently, or have "commonly and historically," provided a service is not an effective measure for determining what should and should not be outsourced. Just because something has always been done by state employees doesn't tell us that it makes sense to continue doing so. Similarly, the fact that state employees have *never* performed a function doesn't tell us that they shouldn't. By asking the wrong question, we are

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[88] *Department of Highways, supra.*

[89] *Compare*, for example, the *Department of Highways* decision at page 992 (The Civil Service Amendment "does not further specify the services that must be performed by state employees and offers no guidance concerning criteria or mechanisms for delineating, enlarging or reducing the personnel system.") *with* page 998 ("contracts with private sector providers could result in the elimination of a large number of state personnel positions, and thereby implicate the concerns underlying the Civil Service Amendment.")

[90] "This would result in the termination of state employees and elimination of classified positions. This contraction of the state personnel system would implicate the tenure protection features of the Civil Service Amendment." *Department of Highways*, 809 P.2d at 992-93.

[91] *Department of Human Services v. May*, 1 P.3d 159, 166 (Colo. 2000).

[92] *Id.* at 167.

[93] *Id.*

prevented from getting to the right answer. Such an approach provides no additional protection for state employees, and at the same time denies the flexibility needed to meet rapidly changing business needs, particularly with regards to technology.[94] While state employees both "commonly and historically" and currently do provide payroll services, does this mean it continues to make sound business sense?[95] Citizens today legitimately expect that their government will continually look for ways to improve the way it does business, and to explain that efficiencies are not realized because "we have always done it this way" is not a satisfying answer.

Instead, the State needs to be able, in the first instance, to determine what are its core functions that need to be performed by state employees, and what functions are appropriate to outsource.[96] Moreover, what is a "core function" is not locked in time; rather, it changes as the business and business conditions change. Determining what a "core function" of state government is often treads on policy decisions; the public has certain expectations of what services the government should and should not provide.[97] The public cares less whether state employees perform payroll functions or printing services than whether these functions are performed as cost-effectively as possible.

Secondly, before proceeding to outsource non-core functions, a series of factors must be evaluated:

- The availability of the service in the market;
- The potential cost savings;[98]

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[94] It is also not as easy to apply as it may appear at first blush. For example, in institutions of higher education, the practice of managing campus bookstores has varied widely. Some institutions have used state employees, some have used private vendors, and still others have used students. In such a case the "commonly and historically" test provides no clear answer. And, does the fact that the State has previously employed COBOL programmers mean that it is forbidden from contracting out programming for Java applications? *See* Feiman, *Selecting Alternatives in IT: A Decision-Making Model* (Gartner Res. Feb. 18, 2003) at 2 (concluding that it costs $57,000 to migrate a COBOL developer to Java, and that even then the failure rate is 60%).

[95] Similarly, there are over 80 employees in the Denver metro area engaged in printing, microfilming, graphic arts, mail metering, and quick copy services. Legislative Audit Committee, *Division of Central Services Performance Audit* (May 2003) at 11.

[96] Determining what a core function is varies from organization to organization. Printing services, for example, is the likely core business function for a company such as Kinko's, but a company like Canon, which manufactures printers, may outsource its printing needs. Even a successful company such as IBM has moved toward outsourcing its transactional human resources functions. Although it is well-equipped to build and implement a human resource information system, IBM determined that it was not a "core function" of their business.

[97] The Commission heard fairly broad, but consistent, discussion regarding what those "core functions" are. Testimony of Rudy Marquez, Materials Handler, Department of Transportation (health and safety functions); testimony of Rick Malinowski, Director, Division of Information Technologies, Department of Personnel & Administration (public safety, human services, education, transportation).

[98] This particular point is complicated by the fact that there currently exists no reliable consistent method for costing out the activities of state employees. Testimony of Rodney Martinez, staff council, Adams State College (June 13, 2003).

- The assurance that the contracted services will be of the same or greater quality as those provided by state employees;
- The extent to which performance results can be specified;
- The risks involved and the extent to which they can be minimized;
- The consequences of any service interruption due to contractor failure; and
- How accountability can be maintained by the government.[99]

We stress that outsourcing must be closely linked to the creation of an effective performance contracting infrastructure and cost accounting expertise. Although the State currently uses best value bidding and performance-based contracting, in most respects, it does not adequately train employees to perform contract or project management.[100] Frequently, contract administration involves payment of invoices, and minimal evaluations to determine if the contractor is performing at the expected level.

As employees' roles change from delivering the service to overseeing the service, they need the tools to perform their newly defined roles. State employees need to be protected from adverse effects on pay, tenure, and status directly resulting from outsourcing. The State should also provide retraining and education that enable employees to make successful transitions.

For this reason, contracting reforms should be phased in over time. Moreover, not only is it unclear whether the State could lay off dozens of employees and replace them with private contractors, it may be questionable policy in any event to do so.[101] The Commission recommends that the Civil Service Amendment be modified to specifically authorize contracting, regardless of whether a state employee has ever performed the function. At the same time, explicit provision should be made to prevent any resulting direct adverse effects upon individual certified state employees. We further recommend leaving the current statutory contracting scheme – imperfect as it is – in place until the General Assembly develops clear standards regarding what sort of functions may and may not be outsourced. In addition, outsourcing efforts must be closely linked to the formation of performance-based management with the systems and cost accounting expertise that allow for competitive strategic management. Done properly, contracting has proven to be a valuable tool for state government in delivering more cost-efficient and effective services to the public.

Higher Education. Colorado is the only state that constitutionally mandates employees of higher education to be included in the general state personnel system. This relationship needs to be revisited in light of two trends that have gained momentum in recent years: decentralization and separation from the State.

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[99] "How does the state maintain control and accountability and more importantly who can the citizens of Colorado turn to when they experience problems or dissatisfaction with services?" Statement of State Personnel Employees Executive Council, University of Northern Colorado (July 1, 2003).

[100] Testimony of Gary Golder, Warden, Sterling Correctional Facility (May 16, 2003); testimony of Phyllis Shiba, staff council, University of Colorado at Colorado Springs (June 25, 2003); testimony of Diana Algiene-Henry, staff council, University of Northern Colorado (July 1, 2003).

[101] *See* Jonathan Walters, "Civil Service Tsunami," *Governing* (May 2003).

First, the structure of public higher education in Colorado has devolved over the past decade. There are now eleven separate governing boards, eight of which are responsible for single-campus institutions:

- Board of Regents of the University of Colorado (four campuses)
- Board of Governors of the Colorado State University System (two campuses)
- State Board of Community Colleges (sixteen campuses/thirteen institutions)
- The Trustees of the University of Northern Colorado (single campus)
- The Trustees of the Colorado School of Mines (single campus)
- The Trustees of Metropolitan State College of Denver (single campus)
- The Trustees of the Fort Lewis College (single campus)
- The Trustees of Mesa State College (single campus)
- The Trustees of Western State College (single campus)
- The Trustees of Adams State College (single campus)
- The Auraria Higher Education Center Board of Directors (single campus)

Second, the financial and oversight relationship of institutions of higher education to the rest of state government have become more attenuated. As one college president told the Commission, with the changing landscape of higher education, particularly given the public policy debate over the "enterprise" issue,[102] the question arises regarding why and to what extent institutions should continue to be tied to the State in purchasing, capital development, and human resources.[103] It is a fair question, given the costs that are imposed upon institutions already struggling to implement multiple personnel systems.[104] "Each system has its own set of rules and policies that must be followed. Although we were not able to quantify the cost of maintaining these separate systems, most human resources directors with whom we spoke believe it is more expensive to maintain multiple personnel systems than it would be to maintain fewer systems under the control of a single governing board due to issues such as increased overhead, training, and conflict resolution."[105] The State Auditor thought that once past initial startup costs, the advantages of a different approach would be significant:

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[102] A government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments is exempted from the revenue and spending restrictions of the TABOR Amendment. *See* Colo. Const. art. X, § 20.

[103] Testimony of Dr. Jay Helman, President, Western State College (June 11, 2003).

[104] This results in a "caste system" of differing employees and personnel systems. Testimony of Kay Norton, President, University of Northern Colorado (July 1, 2003). For example, the University of Colorado at Denver (UCD) has *nine* different kinds of employees: officers, administrators, faculty, research faculty, graduate student faculty, professional exempt staff, classified staff, students, and temporaries. Testimony of Ken Tagawa, former Human Resources Director, UCD (May 9, 2003). In contrast, non-state colleges can have only two personnel systems: faculty and non-faculty. Testimony of Carol Hoaglund, Vice President for Administrative Services, Aims Community College (July 1, 2003). Or, than can have only *one* system. Testimony of Dr. Robert Spuhler, President, Colorado Mountain College (July 10, 2003).

[105] *Report of the State Auditor: Higher Education Exemption Process* (Sept. 2002) at 25.

> The cost of administering fewer personnel systems should be less than the current cost of administering several separate systems. In addition, the State could redirect the money it currently spends each year on the exemption process. Since the higher education personnel system appears to be moving slowly toward an exempt system, expediting this process could result in certain efficiencies. It could help eliminate disparities in position classifications (i.e., exempt versus classified) within the higher education system, as well as in the state personnel system, which would in turn help eliminate the tension and conflict that sometimes occurs between classified and exempt employees. A completely exempt system would also eliminate legal challenges and provide the higher education system with greater flexibility to meet its staffing needs.[106]

The Commission considered the possibility of establishing a statewide higher education personnel system similar to that in place in the State of Illinois. However, in light of the trends discussed above, it is clear that replacing the State's one-size-fits-all system with a higher education one-size-fits-all system would provide minimal improvement; it would confer no greater flexibility, nor give any appreciable benefit to employees.[107] Each of the eleven governing boards has unique missions and systems, as well as differing labor markets that demand more flexibility. The number of qualified applicants and the institutional needs are very different at Otero Junior College in La Junta than they are for the University of Colorado system in Boulder, Denver, and Colorado Springs. However, an outright exclusion of the higher education systems from the state personnel system would be an enormous undertaking and might not best serve the State and employees at all institutions.[108]

Therefore, the working group began discussing reform measures that would allow each institution, on a governing board basis, to "opt-out" of the state system and create its own personnel system to meet its specific and unique needs.[109] It was presumed that any such plan

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[106] *Id.* at 28.

[107] "Any system that replaces the current system must also be flexible enough to accommodate the fundamental differences between the higher education agencies and other state agencies. Those differences include geographical cultural and physical regional differences, the larger number of employees who are exempt from the State Personnel System in higher education agencies, the variety of functions performed by classified staff in higher education agencies and, most important, fundamental differences in the funding structure of higher education agencies to other state agencies." Testimony of President Robert Dolphin, Fort Lewis College (June 12, 2003).

[108] "On the other hand, exempting all higher education employees does not eliminate the public interest in having the State maintain a well-qualified workforce. Any new system in higher education must be grounded in merit principles in order to ensure the taxpayers continue receive high-quality government services." *Report of the State Auditor: Higher Education Exemption Process* (Sept. 2002) at 25.

[109] We already have experience with colleges "opting-in," in part because of a statute passed in 1975. *See* § 23-71-202, C.R.S. In 1997, Northeastern Community College joined the state community college system, followed by Colorado Northwestern Community College in 1999. Lamar Community College (formerly, Junior College of Southeastern Colorado) entered the state system in the 1960's. Aims Community College and Colorado Mountain College have remained independent public institutions of higher education outside of the state system, in part because of the additional flexibility that status affords them. Testimony of Carol Hoaglund, Vice President for Administrative Services, Aims Community College (July 1, 2003); testimony of Dr. Robert Spuhler, President, Colorado Mountain College (July 10, 2003).

would require a constitutional amendment, but the 1973 formal Attorney General's opinion discussed earlier raised the question of whether this would necessarily be the case. The Commission sought further clarification on this point from the Attorney General's office.

The original Constitution provided that the Board of Regents of the University of Colorado had "the general supervision of the University."[110] In 1972, the citizens of Colorado voted to amend Article VII, and repeal the Board of Regents' original grant of authority in Article IX, § 14. This change "extend[ed] constitutional status to all governing boards for institutions of higher education and clarifie[d] the prerogative of the General Assembly to modify that control by statute." [111]

In 1973, the Attorney General issued an opinion concluding that institutional governing boards' constitutional power of "supervision and control" makes conflicting general statutory provisions inapplicable to those institutions, although legislation specific to higher education remains effective. [112] A few months later, the Attorney General issued a followup opinion concluding that as a result, the staff of the University not otherwise exempted, had to be brought into the state personnel system, in accordance with legislation that expressly included state institutions of higher education. [113]

In the absence of that statutory provision, the employees of the University of Colorado would have remained outside the civil service, and because the 1972 amendment put all state institutions on the same legal footing, it follows that the General Assembly may by statute include or exclude any or all positions in higher education from the civil service. As the University Hospital case makes clear, however, individual employees have rights that must be protected if an institution leaves the state system. [114] At a minimum, currently certified employees may not be forced into an alternative, "at-will" personnel system if a higher education institution "opts-out" of the state system.

Thus, the Attorney General's Office has concluded that the effect of the 1972 amendment is to permit the General Assembly to determine to what extent non-exempt positions at institutions of higher education must be included in the state personnel system, so long as the pre-existing rights of classified state employees occupying those positions at the time are preserved. Therefore, it is unnecessary to refer any measure regarding higher education to the voters. [115]

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[110] Colo. Const. Art IX, § 14 (1876).

[111] Legislative Council of the Colorado General Assembly, *An Analysis of 1972 Ballot Proposals*, Research Pub. No. 185 (1972) at 8.

[112] Colo. Att'y Gen. Op. No. 73-0014 (Apr. 2, 1973).

[113] Colo. Att'y Gen. Op. No. 73-0042 (Dec. 12, 1973). In this case, the specific legislation was the State Personnel System Act, which included "all employees of the state colleges and universities not otherwise exempted by law. See § 24-50-101(1), C.R.S., formerly section 26-1-1, C.R.S.

[114] *Colorado Ass'n of Public Employees v. Board of Regents*, 804 P.2d 138 (1990).

[115] Interestingly, the General Assembly has already provided (since 1985) a statutory mechanism for community colleges to "opt-out" of the state higher education system and with it, presumably, the state personnel system.

In light of the legal requirements, as well as the extensive testimony received on this recommendation, the Commission recommends that the General Assembly ensure that the following essential components be included in any "opt-out" proposal it may approve:

- Affected employees should be involved in the design of any alternative system;[116]
- Due process in employee discipline must be ensured;
- Current civil service employees' rights must be guaranteed if incumbents do not wish to transition to the new system;[117] and
- Current employees' right to continue participating in PERA must be undisturbed.[118]

The Commission believes that by adhering to these principles, the General Assembly and individual governing boards can foster improved human resource management at the various institutions of higher education.[119]

Miscellaneous. The "appointing authority" concept is useful in describing persons having authority to appoint, discipline, and compensate their employees, but need not be set forth in the Constitution. The Commission recommends simply vesting this authority in the heads of department and institutions, as subsequently structured or delegated in accordance with law. We also propose updating some of the language in the amendment, such as changing the archaic "fitness" to "qualifications," using "until retirement, resignation, or separation for cause" instead of "during efficient service or until reaching retirement age," substituting "administrative law judges" for "hearing officers," and providing that a State Personnel Board member has "no limitation of terms" rather than "may succeed himself." Finally, the Commission recommends eliminating the provision regarding contracting between the State

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[116] Testimony of Regina Celi, Risk Manager, University of Colorado at Boulder (May 7, 2003); testimony of Dana Gibson, Vice Chancellor, University of Colorado at Denver (May 9, 2003).; e-mail from Kawna Safford, staff council, Mesa State College (June 12, 2003). The Commission believes any opt-out proposal must enjoy broad support from affected employees. A clear majority of the higher education employees the Commission has heard from (either directly or through staff council representatives) have opposed the opt-out concept.

[117] *E.g.,* testimony of Rodney Martinez, staff council, Adams State College (June 13, 2003); testimony of Marilyn Charlesworth, staff council, Mesa State College (July 11, 2003); e-mail from Kawna Safford, staff council, Mesa State College (June 12, 2003).

[118] This was a key component of University Hospital's successful transition to an independent personnel system in the 1990's. Testimony of Forrest Cason, Senior Vice President and Chief Financial Officer, University Hospital. Also, without exception, employees wanted to ensure that continued participation in PERA would be guaranteed. *E.g.,* testimony of Deanna Adams, staff council, Colorado State University-Fort Collins (Apr. 17, 2003). Participation in PERA is established by statute and is not dependent upon the state civil service. Currently, PERA covers state employees, as well as those of local school boards and other local governments, including two public (but not state) institutions of higher education: Aims Community College and Colorado Mountain College. If employees wished to participate in alternative retirement programs, they could as provided by law, but this needs to be voluntary.

[119] The General Assembly has already provided an example of how this might be done, in the context of the Office of the State Auditor. Section 24-50-112.5(6), C.R.S.

and its political subdivisions, or modifying it and moving it into statute, as it is unrelated to the merit principle.[120]

We appreciate the opportunity to provide input into possible changes in the area of state civil service laws. We believe that these reforms strike the right balance between protection and accountability, and will well serve "the overarching purpose of the state personnel system," which is "to assure that a well-qualified work force is serving the residents of Colorado."

[120] *See* Colo. Const. art. XIII, § 13(4).